

CITY OF SAN JOSÉ, CALIFORNIA
Department of Planning, Building and Code Enforcement
801 North First Street, Room 400
San José, California 95110-1795

STAFF REPORT

Hearing Date/Agenda Number
PC 05/25/05 File # 3.a.

File Number
CP05-013

Application Type
Conditional Use Permit

Council District
6

Planning Area
Central

Assessor's Parcel Number(s)
274-26-014

PROJECT DESCRIPTION

Completed by: David Tymn

Location: Southeast corner of Hedding Street and N. Bascom Avenue.

Gross Acreage: 0.50

Net Acreage: 0.50

Net Density: N/A

Existing Zoning: CP Commercial Pedestrian District

Existing Use: Unoccupied gasoline service station with incidental auto repair and auto parts sales.

Proposed Zoning: No Change

Proposed Use: Canopy and pump island modifications for gasoline service station with incidental auto repair and auto parts sales.

GENERAL PLAN

Completed by: DT

Land Use/Transportation Diagram Designation
Medium Low Density Residential

Project Conformance:
☒ Yes ☐ No
☒ See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: DT

North: Office

CO - Commercial Office District

East: Single-family residential

R-1-8 Residence District

South: Single-family residential

R-1-8 Residence District

West: Office

CP – Commercial Pedestrian District

Completed by: DT

☐ Environmental Impact Report found complete
☐ Negative Declaration circulated on _____
☐ Negative Declaration adopted on _____

☒ Exempt
☐ Environmental Review Incomplete

FILE HISTORY

Completed by: DT

Annexation Title: College Park/Burbank Sunol

Date: December 8, 1925

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

☒ Approval
☐ Approval with Conditions
☐ Denial
☐ Uphold Director's Decision

Date: _____

Approved by: _____
☒ Action
☐ Recommendation

OWNER

Ali Amidy
655 Campbell Technology
Park #125
Campbell CA 95008

APPLICANT/DEVELOPER/CONTACT

Jim Rubnitz
17610 Blanchard Drive
Monte Sereno, CA 95030

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: DT

Department of Public Works

See attached memorandum from the City of San Jose Public Works Department.

Other Departments and Agencies

See attached memorandum from the City of San José Police Department.

GENERAL CORRESPONDENCE

See the attached letter from Harriet Wolf, dated May 15, 2005.

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

This is a Conditional Use Permit request to allow operation of a legal non-conforming gasoline service station use (with incidental auto repair) that was discontinued for more than six months and modifications to the existing service station facility on a 0.5-acre site in the CP Commercial Pedestrian Zoning District. The proposed modifications include the demolition of two existing pump island canopies, construction of a single new canopy, and associated site and landscape improvements. Site improvements include the closure of an existing driveway onto Hedding Street.

A Conditional Use Permit is now required in the CP Commercial Pedestrian Zoning District for a gasoline service station with incidental auto repair. This service station use was implemented prior to the requirement for a Conditional Use Permit and is considered legal non-conforming. Because the service station use was discontinued for more than six months, a Conditional Use Permit is required to bring this station into conformance with the requirements of the CP District. This Conditional Use Permit also serves as a Site Development Permit for the proposed building and site improvements.

The site currently contains a vacant gas station with eight fuel dispensers under two canopy structures and a service building. The service building has an approximately 1,150 square-foot auto service area and approximately 500 square feet of office/customer waiting area. The auto service area has three vehicle bays. The new proposal does not increase the number of fuel dispensers and does not include after-midnight operation.

Site and Surrounding Uses

The subject site is located on the southeast corner of Hedding Street and N. Bascom Avenue. Across Hedding Street from the site to the north, are business offices. Across N. Bascom Avenue from the site to the west are business offices. Diagonally across from the project site to the northwest are business offices as well. Immediately adjacent to the east and south are existing single-family homes.

ENVIRONMENTAL REVIEW

Under the provisions of Section 15332 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended, in that:

The project consists of in-fill development meeting the conditions described in this section.

- (a) The project is consistent with the applicable general plan policies as well as with applicable zoning designation and regulations
- (b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.
- (c) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.
- (d) The site can be adequately served by all required utilities and public services.

GENERAL PLAN CONFORMANCE

The subject site is designated Medium Low Density residential (8 DU/AC) on the San José 2020 General Plan Land Use/Transportation Diagram. Although this site has a residential designation on the General Plan Land Use/Transportation Diagram, the goals and policies of the General Plan deem existing uses on parcels that are two acres or less in size, to be in conformance with the General Plan regardless of how it is designated. Although the gas station use is not currently in operation, the existing facility is designed exclusively for that use and a service station has operated acceptably at this location for many years. For these reasons, staff concludes that the use conforms to General Plan policy regarding existing uses on parcels of less than two acres.

PUBLIC OUTREACH

The property owners and occupants within a 500-foot radius were sent public hearing notices for the public hearings before the Planning Commission and City Council. In addition, the staff report and hearing schedule for this project are available on the City's web site. Staff has received phone calls from members of the public concerned regarding late night uses on the site. Staff has clarified that after-midnight operation is not proposed.

ANALYSIS

Primary issues for this project include: 1) compatibility with surrounding uses and 2) conformance with the Commercial Design Guidelines

Compatibility with Surrounding Uses.

The primary land use compatibility issues for this project include existing compliance issues, appropriate buffering of adjacent residential uses, shielding of outdoor lighting, and hours of operation.

The proposed use is located immediately adjacent to the rear yards of existing single-family residences. The area behind the existing service station building is particularly troublesome due to its proximity to adjacent residences and the police concern that surveillance of the area is poor. Currently, an unpermitted cargo container is stored behind the service station and a building addition has been constructed at the rear of the station without benefit of permits. The Draft Permit for this project includes a condition requiring the removal of the illegal storage container and building additions within 60 days of approval of this permit, consistent with Code Enforcement requirements for the site.

The applicant is proposing to enclose this rear area with a tubular steel fence and gate in conformance with the recommendations of the Police Department and to add landscaping at the corner of the site. Staff has included a revised plan condition in the Draft Permit requiring that a five-foot wide landscape

planter with trees be extended along the entire length of the shared property line with the adjacent residences to ensure an adequate landscape buffer.

Proposed lighting in the rear area of the site includes wall-mounted fixtures that can be directed outward as well as down and proposed canopy lighting fixtures do not appear to conform to the fully shielded definition of the City Council Policy; *Outdoor Lighting on Private Developments*. Staff has included a revised plan condition in the Draft Permit requiring that the lighting be directed downward and that the light fixtures be fully shielded.

Surrounding neighbors have expressed concern regarding hours of operation. As indicated above, the applicant is not proposing to operate the facility beyond the hours currently allowed for operation of commercial uses (6 a.m. to 12 midnight); however, staff has included a condition in the Draft Permit limiting the auto repair operation to between the hours of 7:30 a.m. and 7:30 p.m.

Based on this analysis, staff concludes that, as conditioned, the proposed project should be able to operate in a manner that is compatible with surrounding uses.

Conformance to the Commercial Design Guidelines

According to the Commercial Design Guidelines, gasoline service station sites should be well designed to accommodate circulation patterns; limit driveways cuts to one or two per street; provide well-located landscaped areas; include structures that are architecturally consistent; and provide public restrooms. The project proposes to close one driveway and add landscaping in place of the driveway in conformance with staff recommendations. A revised plan condition included in the Draft Permit requires additional landscaping to ensure adequate buffering of adjacent uses. The proposed site plan is well laid out and accommodates the circulation of cars using the gasoline dispensers as well as the vehicle workstations. The proposed canopy design is compatible with the existing building in terms of scale and materials and public restrooms will be available to the public during the hours of operation of the gas station. Based on this analysis, staff concludes that the project is consistent with the recommendations of the Commercial Design Guidelines.

RECOMMENDATION

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its resolution:

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of Medium Low Density Residential (8 DU/AC) on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The site is currently zoned CP Commercial Pedestrian.
3. The site is 0.5 gross acres in size.
4. The areas surrounding the site are designated as Medium Low Density Residential (8 DU/AC) on the San José 2020 General Plan Land Use/Transportation Diagram.
5. The proposed project consists of the demolition of two existing pump island canopies, to construct one new pump island canopy, and allow site and landscaping improvements at an existing

unoccupied gasoline service station.

6. The gasoline service station currently has three vehicle repair/service bays.
7. This is a Conditional Use Permit request to allow operation of a legal non-conforming gasoline service station use (with incidental auto repair) that was discontinued for more than six months and modifications to the existing service station. A Conditional Use Permit is now required in the CP Commercial Pedestrian Zoning District for a gasoline service station with incidental auto repair. This service station use was implemented prior to the requirement for a Conditional Use Permit and is considered legal non-conforming. Because the service station use was discontinued for more than six months, a Conditional Use Permit is required to bring this station into conformance with the requirements of the CP District. This Conditional Use Permit also serves as a Site Development Permit for the proposed building and site improvements.
8. The subject site is located on the southeast corner of Hedding Street and N. Bascom Avenue. Across Hedding Street from the site to the north, are business offices. Across N. Bascom Avenue from the site to the west are business offices. Diagonally across from the project site to the northwest are business offices as well. Immediately adjacent to the east and south are existing single-family homes.
9. An unpermitted cargo container is stored behind the service station and a building addition has been constructed at the rear of the station without benefit of permits. The Draft Permit for this project includes a condition requiring the removal of the illegal storage container and building additions within 60 days of approval of this permit, consistent with Code Enforcement requirements for the site.
10. This Permit includes enclosure of the area behind the building with a tubular steel fence and gate in conformance with the recommendations of the Police Department and the addition of landscaping at the corner of the site. A revised plan condition in the Draft Permit requires that a five-foot wide landscape planter with trees be extended along the entire length of the shared property line with the adjacent residences to ensure an adequate landscape buffer.
11. Proposed lighting in the rear area of the site includes wall-mounted fixtures that can be directed outward as well as down and proposed canopy lighting fixtures do not conform to the “fully shielded” definition of the City Council Policy; *Outdoor Lighting on Private Developments*. A revised plan condition in the Draft Permit specifies that lighting be directed downward and that the light fixtures be fully shielded.
12. The applicant is not proposing to operate the facility beyond the hours currently allowed for operation of commercial uses (6 a.m. to 12 midnight). In response to neighborhood concern about hours of operation, a condition in the Draft Permit limits the incidental auto repair operation to between the hours of 7:30 a.m. and 7:30 p.m.
13. According to the Commercial Design Guidelines, gasoline service station sites should be well designed to accommodate circulation patterns; limit driveways cuts to one or two per street; provide well-located landscaped areas; include structures that are architecturally consistent; and provide public restrooms.
14. This permit includes the closure of one driveway and additional landscaping in place of the driveway in conformance with staff recommendations. A revised plan condition included in the

Draft Permit requires additional landscaping to ensure adequate buffering of adjacent uses. The proposed site plan accommodates the circulation of cars using the gasoline dispensers as well as the vehicle workstations. The proposed canopy design is compatible with the existing building in terms of scale and materials and public restrooms will be available to the public during the hours of operation of the gas station.

15. Under the provisions of Section 15302(b) of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project conforms to the City's General Plan. Although this site has a residential designation on the General Plan Land Use/Transportation Diagram the goals and policies of the General Plan deem existing uses on parcels that are two acres or less in size, to be in conformance with the General Plan regardless of how it is designated.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not:
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features in this title, or as otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
 - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the

land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Payment of Recording Fees.** The fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted (payable to the County of Santa Clara Recorder) within **60 days** from the date of issuance of the resolution granting the permit. Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.
2. **Permit Adjustment Required.** Within 30 days of approval of this Permit and prior to recordation or issuance of Building Permits, the applicant shall submit a Permit Adjustment that addresses the following issues to the satisfaction of the Director of Planning:
 - a) Revise the project plans to include a minimum of five feet of landscaping, including trees, along the east and south property lines.
 - b) Revise the project plans to ensure that lighting mounted on the side of the building is fully shielded and directed downward and that lighting on the canopy is fully shielded so that the light sources will not be visible from off the project site.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled “910 North Bascom Avenue Gas Station Remodel”, dated May 25, 2005, on file with the Department of Planning, Building and Code Enforcement.
2. **Code Enforcement Violations.** Within 60 days of the approval of this permit, the applicant shall comply with Code Enforcement directives which include, but are not limited to, the removal of storage containers and the removal of illegal additions to the building.
3. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
 - (1) *Construction Plans.* This permit file number, CP05-013, shall be printed on all construction plans submitted to the Building Division.
 - (2) *Emergency Address Card.* The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.

- (3) *American With Disabilities Act.* The applicant shall provide appropriate access as required by the American With Disabilities Act (ADA).
 - (4) *Demolition Permit.* Obtainment of a demolition permit is evidence of acceptance of all conditions specified in this document and the applicant's intent to fully comply with said conditions. No demolition of the structure may be implemented unless and until the Building Division issues a demolition permit pursuant to Section 301 of the Uniform Building Code, as adopted pursuant to the provisions of Chapter 17.04 of Title 17 of the San José Municipal Code.
 - (5) Conformance with Precedent Condition No. 2 of this Permit requiring approval of a Permit Adjustment that brings proposed lighting into conformance with City requirements.
4. **Fire Safety.** The applicant shall meet all requirements of the Fire Department at the Building Permit stage.
5. **Public Works Conditions.** Prior to the issuance of Building permits, the applicant will be required to have satisfied all of the following Public Works conditions. The applicant is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits. The applicant shall satisfy the following Public Works Condition to the satisfaction of the Director of Public Works:
1. **Minor Improvement Permit:** The public improvements conditioned as part of this permit require the execution of a Minor Street Improvement Permit that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This permit includes privately engineered plans, insurance, surety deposit, and engineering and inspection fees.
 2. **Sewage Fees:** In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable.
 3. **Street Improvements:** Remove and replace broken or uplifted curb, gutter, and sidewalk along project frontage.
 4. **Landscape:**
 - a) The proposed street trees on Hedding Street shall be installed in cutouts at the back of curb (not in the landscaped area in the back of curb as shown in the plans).
 - b) The exact number of street trees will be determined at the street improvement stage. Contact the City Arborist at (408) 277-2756 for the designated street tree.
6. **Hours of Construction Activity.** No construction activity shall occur before 7.00 A.M. or after 7.00 P.M. on Monday through Friday or at anytime during Saturdays and Sundays.
7. **Hour of Operation.** Operation of the gas station shall be limited to between the hours of 6:00 A.M. and 12:00 midnight. Incidental auto repair shall be limited to between the hours of 7:30 A.M. and 7:30 P.M.

8. **Archaeology.** Pursuant to Section 7050.5 of the Health and Safety Code, and Section 5097.94 of the Public Resources Code of the State of California in the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission who shall attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the land owner shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.
9. **Street Cleaning and Dust Control.** During construction, the developer shall damp sweep the public and private streets within and adjoining the project site each working day sufficient to remove all visible debris and soil. On-site areas visible to the public from the public right-of-way shall be cleaned of debris, rubbish, and trash at least once a week. While the project is under construction, the developer shall implement effective dust control measures to prevent dust and other airborne matter from leaving the site.
10. **Nuisance.** This use shall be operated in a manner that does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
11. **Noise.** Noise at the shared residential property line associated with operation of the use shall not exceed 55 db DNL.
12. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings, fences, and wall surfaces within 48 hours of defacement.
13. **Anti Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris.
 - a. Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts and garbage and shall include daily damp washing of all exterior walls and sidewalks along the project's frontage.
 - b. Mechanical equipment used for outside maintenance, including blowers and street sweepers shall not be used between 10:00 P.M. and 6:00 A.M. daily.
 - c. The facility operator shall provide adequate ashtrays along the business frontage to accommodate patrons who wish to smoke outdoors. Patrons smoking outdoors shall not impede pedestrian traffic along the adjacent rights-of-way, nor create a nuisance for adjoining businesses.
14. **Sales of Food and Alcohol.** Pursuant to 20.80.550 of the Zoning Ordinance, no retail sales of alcoholic beverages or grocery or food items are permitted in a gasoline service station.
15. **Sign Approval.** No new signs are approved at this time. All proposed signs shall be subject to approval by the Director of Planning, Building, and Code Enforcement.

16. **Conformance with Municipal Code.** No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.
17. **Lighting.** On-site lighting shall use low-pressure sodium fixtures and be designed, controlled and maintained so that no light source is visible from outside of the property.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire **two years** from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment in accordance with Title 20 to extend the validity of this Permit for a period of up to but not exceeding one (1) year; provided, however, that no more than two (2) such term extensions are approved. The Permit Adjustment must be approved prior to the expiration of this Permit.
2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
 - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.

Attachments:

Plan Set

Memo from Police Department

Memo from Public Works Department

Letter from Harriet Wolf

cc. Sandy Bouja, Code Enforcement Division